IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Case No: 3:17-cr-00044
)	Chief Judge Crenshaw
BENJAMIN ALEXANDER FAULKNER)	J

UNITED STATES' STATEMENT REGARDING 3553(a) FACTORS / SENTENCING MEMORANDUM

It must be pre-teen and it must be any material where the child is performing a sexual act. —Crazymonk

The purpose of this criminal enterprise could not be clearer—a space and community on the Giftbox Exchange that encouraged the sexual assault of young children. While the purpose of the enterprise was straightforward and simple, the methods of operating it were not. It was highly organized, with a hierarchy of leadership and staff and membership requirements. The defendant and his co-conspirators went to great lengths—using advanced technology—to bury their criminal activity in the Dark Web, thereby enabling them to evade law enforcement. The defendant was an administrator of Giftbox and also created Child's Play—another website similarly dedicated to the exchange of child abuse material. He oversaw the exchange of tens of thousands of images and videos of children, infants, being brutally sexually abused. For this, the defendant should be sentenced to at least 40 years imprisonment followed by a lifetime of supervised release.

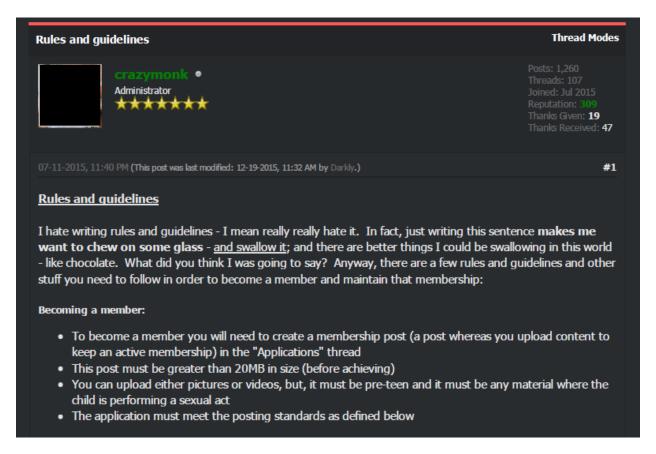
I. The Enterprise



The Giftbox Exchange (Website A) was a website that operated on the Tor anonymity

network from July 2015 until it was shut down by law enforcement in November 2016. Because Giftbox was hosted on Tor, the Internet Protocol (IP) address of the website itself—as well as the IP addresses of its members—was masked, such that law enforcement could not use that information to identify the server hosting the website.

Giftbox was dedicated to the sexual exploitation of children. To become a member, a user had to make an application post depicting the sexual abuse of a pre-teen child:



The application post had to be posted in the "Applications" thread. The posting standards were specific and required users to include a preview image in their post, to use approved image uploaders to host the files, and to encrypt the images or videos with a password. Giftbox had several other threads that organized the content on the website:

38		General
"Recalling" unread PM's 2 hours ag by crazymon	81 531	Site Information Information specific to the site Sub Forums: Links, File Hosts
combining multiple file p 7 hours ag by Liz	118 578	Technology & Security Technology Security, tricks, and how-tos Sub Forums: How-to
Sinbox Plugin? 9 hours age by targaryer	20 77	Feedback Anything you want us to know Sub Forums: Ask Us Anything - Confidential
Toy Box 3 hours ago by Quickdrav	229 1,767	Pedo Chat Whatever you want to talk about Sub Forums: English, Deutsch, Español, and 3
Jazzy's Guides 3 hours ago by HornyPedo4As	65 338	Fun Stuff Jokes, Stories, Funny pictures, and Art Sub Forums: Art / Hentai
XX		VIP
Never		Private zone Applications Private zone
VIP Wish List Yesterday, 05:05 AN by Darkl		VIP Applications Fast track applications Sub Forums: VIP Application Information

There were also specific forums and sub-forums for the different types of child pornography to be posted, including sections for pre-teen hardcore and babies and toddlers:

Girls		ar ar
Model/Producer section Section dedicated to running threads for specific models and producers	113 1,425	AMS Cherish Sets 221, 227 1 hour ago by Play
Pre-teen Hardcore Ages 5 to 12 Sub Forums: Videos, Golden Oldies, Pictures	2,181 8,313	Gabi (9yo) sucks dad on w 58 minutes ago by Girlfriender
Pre-teen Softcore Ages 5 to 12 Sub Forums: Non Nude, Videos, Pictures	914 2,468	welcome in joy's only gir 3 hours ago by TheUndead2
Teenagers Budding breasts Sub Forums: Photos, Videos	467 1,695	Alice & Silvia – 2 JB Gir 9 hours ago by lolzed
Cam For webcams, Spycams & Selfshot videos Sub Forums: Teenage Cams	1,035 3,110	youtube webcam 2 hours ago by jakers
Fetishes Little girls and fetishes	146 477	panty poop, scat, diaper 17 minutes ago by whiteywood
Babies & Toddlers Ages 0 to 4	304 1,339	MCCL-toddler HD [sc] [n] 32 minutes ago by Wallypop
Requests Come here to request girl material Sub Forums: Subtitle Requests	396 1,259	Request for video named " 4 hours ago by bdwpbdwpbdwp

Giftbox also had VIP and "producer only" zones that were accessible only to a select group of members—generally those who produced original child pornography content to be shared on Giftbox. The child pornography posted on Giftbox within these subforums included videos of babies and toddlers being tied up and sexually abused by adult men.

Giftbox was not just a place for people to trade child pornography. It was a place for people who wanted to sexually abuse children to network. For example, Falte met the father of the 4-year old girl he traveled to Virginia to sexually abuse on Giftbox and then also introduced Faulkner to that individual so he too could sexually abuse the child.

Giftbox had a technologically sophisticated security system to verify the identity of different members, called public key cryptography. The cryptographic system uses pairs of keys

(PGP keys)—one public and one private—to exchange information. The public key is distributed to others, while the private key is securely stored and known only to the account holder. This pair of keys accomplishes two functions: authentication, whereby the public key is used to verify that a holder of the paired private key sent the message; and encryption, whereby only the holder of the paired private key can decrypt the message encrypted with the public key.

Defendant Patrick Falte created Giftbox and went by the username "CrazyMonk" on the site. Falte was also an administrator of the site—he established and disseminated rules for membership. And Falte paid for the server hosting Giftbox using Bitcoin—an encrypted digital currency. Benjamin Faulkner joined Giftbox in September 2015 as "curiousvendetta" and also became an administrator of the site.

Giftbox grew over time into a vast, global criminal enterprise. In a post dated October 8, 2015, Falte discussed the site's statistics as compared to another child pornography website called Magic Kingdom. He stated that Giftbox had 55,151 members with 1,536 of those being approved. He also noted that he had removed over 75,000 members that had registered in the past. He also bragged that Giftbox "clearly ha[d] more content" than the competitor board, and noted the thousands of threads posted on Giftbox. At the time Giftbox was shut down by law enforcement in November 2016, it had over 72,000 registered users and 56,000 posts.

While the Giftbox Exchange was the central focus of law enforcement's investigation into the criminal enterprise, it was also part of a landscape of other Tor child pornography sites, many of which had overlapping membership. As noted by Falte in the same post on Giftbox discussing statistics, "after the downfall of . . . the other sites that have been seized or shutdown, . . . [w]e are separate sites, but we are still a single community serving a common goal." (emphasis added). In April 2016, Faulkner—using the name "Warhead" started another website

called "Child's Play," also dedicated to the sexual exploitation of children. Members of these sites—including the defendants here—also used an encrypted chat messaging program to talk to each other about Giftbox and Child's Play and the sexual abuse of children. Together, Falte and Faulkner oversaw the largest network of child exploitation websites on Tor.

Law enforcement has arrested at least 43 members of the Giftbox Exchange, in addition to the defendants charged here. This is only a small fraction of its vast membership—identifying members of the site is hugely challenging because they used the Tor network to mask their IP addresses. Even just within those 43 identified, there were at least ten registered sex offenders or individuals with a prior sex offense, and at least five whose jobs involved working with children. Many of the Giftbox members—at least 9 identified so far—had engaged in the hands-on sexual abuse of children.

II. The Factors to be Considered in Imposing a Sentence Under 18 U.S.C. § 3553(a)

A. The Nature of the Offense, § 3553(a)(1), The Seriousness of the Offense, Promoting Respect for the Law, and Providing Just Punishment, § 3553(a)(2)(A)

The defendant was an administrator on Giftbox, as well as on Child's Play, which Faulkner created and even surpassed Giftbox as one of largest child-pornography websites on the Dark Web. These websites catered to the worst child exploitation offenders, including those who enjoy the sexual exploitation of infants and toddlers and "producers" who actively sexually abuse kids. The disturbing nature of the content hosted on Giftbox and Child's Play cannot be overstated.

The defendant and his co-conspirators went to great lengths to hide their illegal activity and elude law enforcement, operating for nearly a year and a half on the Dark Web. They set up complex security mechanisms like the cryptography key system to verify they were talking to

another member and not law enforcement. By using Tor to mask their IP addresses, they were able to hide their identities and avoid being caught.

Faulkner was Falte's right-hand man—one of only a handful of administrators—on Giftbox. He also created and paid for Child's Play, another similar community that encouraged the sexual abuse of children. This community perpetuated the sexual abuse of thousands of children, including babies and toddlers, whose images and videos were traded on Giftbox. A just sentence must reflect the vastness of that harm.

B. The Defendant's History and Characteristics, § 3553(a)(1)

Like Falte, the defendant is young, smart, organized, and technologically skilled. He successfully managed Child's Play, which grew to be even larger than Giftbox. Faulkner has diplomas and certifications related to information technology and advanced technological skills. PSR ¶ 73. He was raised in a stable home with supportive parents and siblings.

In addition to running a large child-pornography site, Faulkner raped a 3 to 4 year old girl multiple times, traveling to Virginia on two occasions for that purpose. He also engaged in particularly offensive efforts to first "groom" the child to make her more comfortable. During an October 2016 trip to Virginia with Faulkner, for example, Falte and Faulkner took the child out for pizza and ice cream, as well as bought her toys. The government does not dispute the defendant's contention that this offense is inextricably related to and part of the child exploitation enterprise.

The defendant further admitted to law enforcement that he had inappropriately touched various minor relatives and, in one instance, took photographs of the children's genitals and posted them to his website Private Pedo Club.

The defendant also had disturbingly candid communications with co-defendant Andrew

Leslie, reflecting an extreme prurient interest in children, especially babies and toddlers:

July 11, 2016

Faulkner: Could be. One set of parents that caught me [abusing a child/children] did

the same

they spoke to me, spoke to the kids. Nothing came of it though.. They

said cops next time if they catch me So I no longer live there anymore lol

Leslie: at least they were nice about it

Faulkner lol were they?

Leslie: they didn't bring the cops lol

I'd say so

They didn't brand you for life

Faulkner: I talked them down a lot though. I worked my magic

Plus they didnt have any evidence, it was all heresay

The girls loved me, apparently faught for them not to talk to me.so they

were rock solid.

no evidence otherwise, so I think I would have been fine..but still

terrifying for a couple months

Faulkner: And yeah, thats the problem with this one too..she used to ramble, now

she is able to make coherant sentances and its kinda scary

Leslie: I grabbed her ass and she told me not to touch her butt

Faulkner: eesh

this one gives me kisses when I ask lol

I dont even have to ask, she goes for them usually

and it melts my heart <3

Leslie: Awwww

I hope this baby will be like that

Faulkner: just groom her lol

Ive never came on a baby before, but my god it sounds pretty great

C. Deterrence, $\S 3553(a)(2)(B)$, and Protecting the Public, $\S 3553(a)(2)(C)$

Both specific and general deterrence call for significant sentences above the mandatory minimum to send a message that engaging in a criminal enterprise that targets children and causes extensive harm—beyond what an individual could accomplish—will result in a federal prison term that takes one far into old age, if not an effective life sentence. Regarding specific

deterrence, the defendant presents a clear and significant risk to children and must be deterred from ever again sexually abusing a child or being part of community that promotes the sexual abuse of children. This is not a case where a defendant has simply downloaded child pornography and it is an abstract risk that he may abuse a child—the defendant has already sexually abused a toddler multiple times. He has committed multiple child-pornography and hands-on offenses, making him more likely to recidivate. Given the defendant's proclivities and the extensive, repeated nature of his offenses against children, only a long prison sentence will be sufficient to deter him from harming another child. The Court should also impose a lifetime of supervised release—as recommended in the Presentence Report—in the event that the defendant is ever released from prison so that his access to the internet and to children will be monitored.

The Court must also issue a sentence that will serve as a general deterrent to others involved in the sexual exploitation on the Dark Web. *See United States v. Bistline*, 665 F.3d 758, 767 (6th Cir. 2012) ("general deterrence is crucial in the child pornography context." (citing *United States v. Camiscione*, 591 F.3d 823, 834 (6th Cir. 2010)). As is evident from the statistics on Giftbox alone, there are thousands of individuals engaging in this activity. Groups such as these are only becoming more common and the interest in egregious abuse of younger and younger children

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¹ United States Sentencing Commission, Report to Congress: Federal Child Pornography Offenses (Dec. 2012), at 170 ("A pedophilic sex offender who has committed both a child –pornography offense and a hands-on sex crime is more likely to commit a future crime, including another hands-on offense, than a defendant who has committed only a child-pornography offense." (citing *United States v. Garthus*, 652 F.3d 715, 720 (7th Cir. 2011) (Posner, J.))), available at https://www.ussc.gov/research/congressional-reports/2012-report-congress-federal-child-pornography-offenses.

² The government notes that the defendant has already received a life sentence in the District Court for the Eastern District of Virginia.

becoming more pronounced. Thus, the message must be sent loudly and clearly to deter others—you cannot escape punishment by hiding on the Dark Web.

D. Sentencing Guidelines Range, § 3553(a)(4)

The Presentence Report calculates the defendant's Sentencing Guidelines range to be 360 to life based on an offense level of 41 with a Criminal History Category II. The government agrees with the guidelines calculation, except for the one objection noted in the government's position regarding presentence report. The government therefore believes the correct guidelines range should be 360 months to life based on an offense level of 42 with a Criminal History Category I. That the defendant's guidelines range goes up to life even with decreases for acceptance of responsibility is reflective of the seriousness of the offense and the significant harm to children caused by a child-exploitation enterprise. The Court must consider this guideline range in determining a sentence. 18 U.S.C. § 3553(a)(4); United States v. Bistline, 665 F.3d 758, 764 (6th Cir. 2012) (rejecting the district court's conclusion that the § 2G2.2 was "seriously flawed" because Congress exercised, rather than delegated to the Sentencing Commission, its power to set policies, and finding instead that the guidelines range was the proper starting point for [defendant]'s sentence). And the defendant's offense is so far beyond the simple downloading of child pornography that the concerns often raised about the childpornography guidelines are not present here. By being an administrator on Giftbox and creating Child's Play, the defendant facilitated an extensive network of both trading in child pornography and sexually abusing children, and the guidelines range appropriately reflects that.

E. Avoiding Unwarranted Sentencing Disparity, § 3553(a)(6)

The defendant's offense does not fall within the heartland of standard child-pornography cases. Charges under the child-exploitation-enterprise statute are relatively rare, and the

government is not aware of any such cases in the Middle District of Tennessee. However, administrators of Tor sites similar to the Giftbox Exchange have been convicted and sentenced in other districts. This includes Jason Gmoser, who was sentenced in the Central District of Illinois to life in prison after being convicted of engaging in a child exploitation enterprise. *United States v. Jason T. Gmoser*, Crim. No. 14-cr-20048 (C.D. Ill. July 15, 2016). Gmoser's conduct was remarkably similar to Falte's—he operated a members-only Tor site dedicated to child pornography which had nearly 30,000 members. Brian Musomba Maweu and John Wyss, members of a similar child pornography website also received life sentences for engaging in a child exploitation enterprise. *United States v. Doe #1 et al*, Crim. No. 5:10-cr-319 (W.D. La 2010). Stephen Chase, who was the administrator of the Tor website Playpen, was sentenced to 30 years imprisonment after being convicted of engaging in a child exploitation enterprise. *United States v. Chase et al*, Crim No. 5:18-cr-15 (W.D.N.C. May 1, 2017). A sentence of 40 years is within this range and would not result in unwarranted sentencing disparities.

III. Government's Sentencing Recommendation

The government recommend that the Court sentence the defendant to a within-guidelines sentence of a minimum of 40 years in prison to be served concurrently to the defendant's life sentence out of the Eastern District of Virginia, and to be followed by a lifetime of supervised release. A sentence of at least 40 years is sufficient but not greater than necessary to comply with the goals enumerated in 18 U.S.C. §3553(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the above styled pleading with the clerk of the court on July 26, 2019, by using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

<u>s/ Lauren E. Britsch</u> LAUREN E. BRITSCH